

AGENDA

State of Wisconsin Livestock Facility Siting Review Board

August 17, 2007
DATCP Board Room 106,
2811 Agriculture Drive, Madison

10:30 a.m. Call to order—Jim Holte, LFSRB Chair

- Open meeting notice
- Approval of agenda
- Approval of July 20, 2007, meeting minutes

10:45 a.m. *Larson Acres, Inc. v. Town of Magnolia, Docket No. 07-L-01* – Review
Final Decision for Edits and Signing - Cheryl Daniels, Board Attorney

11:45 a.m. LUNCH

12:30 p.m. Evaluation of Board Procedures for Hearings

- Position Statements Longer Than 10 pages
- Responses Filed to Position Statements
- Amicus Briefs
- Other Board Member Concerns

2:00 p.m. Board Schedule and Future Agenda Items

- September 21, 2007 meeting – possible cancellation
- Future Schedule 2007 - October 19, November 16, December 21
- Future Agenda Items

2:30 p.m. ADJOURN

**DRAFT MINUTES
LIVESTOCK FACILITY SITING REVIEW BOARD MEETING
July 20, 2007
Room 106, 2811 Agriculture Drive, Madison, WI**

Chair Holte called the meeting to order at 8:05 a.m. LFSRB members present were Lee Engelbrecht, Andy Johnson, Bob Selk, Bob Topel, Jerome Gaska, and Fran Byerly. DATCP staff present were Cheryl Daniels and Lori Price.

1. Call to order

Holte stated the meeting had been publicly noticed, as required, and presented the agenda for approval. Johnson moved to approve the agenda, and Engelbrecht seconded the motion. The motion passed.

Holte presented the May 18, 2007, meeting minutes for approval. Topel moved to approve the minutes, and Gaska seconded the motion. The motion passed.

2. Larson Acres, Inc. v. Town of Magnolia case, Docket #07-L-01

a. Case review process

Daniels stated that Larson Acres is appealing the conditions on the permit and not the permit itself. A number of motions have been requested by various parties involved with this case. Daniels recommended the board accept the documentation received as is, but in the future, the board will want to evaluate the case review process to come up with specifics on receiving and reviewing documentation. She will add this as an agenda item for the August board meeting. There was further discussion on whether the board should make a motion to accept the documentation as is based on the fact that this is the board's first case. Board members were concerned about setting precedence or jeopardizing the final decision by accepting the documentation. Daniels stated the decision will include the findings of fact and conclusions of law in order to indicate the basis for the decision and only refer to those items that support that decision, which is what any future court would look at.

Holte reviewed the three main motions that were requested by the parties involved in the case. The first motion was to strike the Town of Magnolia's position statement because of its length and timing, the second motion was to accept oral arguments at today's meeting, and the third motion was to strike the amicus brief submitted by the department. Gaska moved to accept the Town of Magnolia's position statement and any additional documentation pertaining to the Town's statement. Selk seconded the motion. The motion passed. Before a motion was made on the amicus brief, Selk asked for Daniels' opinion on this matter. Daniels commented that the department is given the authority to work with local governments on livestock siting, therefore, the department would have an opinion on where the law stands. But, it should also be clear that

the board has the ultimate decision in appeal cases. Board members agreed that there was no harm to the case in allowing the brief to be submitted. Selk moved to deny the request to strike the amicus brief submitted by the department and accept the brief into the record. Gaska seconded the motion. The motion passed. Before a motion was made on allowing oral arguments, Daniels read the portion of the LFSRB bylaws prohibiting oral arguments unless the board deems it necessary. Engelbrecht moved to not accept oral arguments. Johnson seconded the motion. The motion passed.

b. Identification of issues on appeal

The board members discussed and identified the issues on appeal. Those issues were:

- does this case belong before the LFSRB
- what are the siting standards utilized under the law
- has the applicant satisfied those standards
- were the permit conditions imposed by the political subdivision appropriate within the state standards

c. Discussion

On the first issue of case venue, the board discussion focused around the facts that the conditional use permit would allow for up to 1500 animal units and the applicant had already built a facility that would allow for expansion. Selk commented that the applicant currently has less than 1000 animal units, and Gaska added that the applicant was requesting a permit for a new facility. Daniels commented that it can be assumed the applicant built a large enough facility in order to expand. Johnson moved that the LFSRB has the authority to review this case. Byerly seconded the motion. The motion passed.

On the second issue of what siting standards apply, the board determined that the Town had not passed more stringent standards beyond the state standards so the standards listed in s. 93.90, Stats., and ATP 51 apply to this case.

On the third issue of the applicant meeting the standards, the board discussed the purpose of the standards, the Town's struggle to deal with an existing resource problem in the area around the farm, and other laws to address resource concerns, particularly the DNR WPDES permitting process. Topel commented there was never any reference in the record to prior problems with the current facility, and that the applicant followed best management practices. Selk added that by initially granting the permit, the Town also agreed the applicant met the standards. Board members agreed that applicant had met the standards.

The board began the discussion on the fourth issue of conditions being appropriate to the siting law by discussing whether they have the authority to review the conditions set forth in the permit. Daniels referred to s. 93.90 (5) (b) and (d), Stats., that gives the aggrieved party the right to challenge the local subdivision's decision and the board the authority to determine if the

challenge is valid and reverse the decision. The challenges in this case are to the conditions within the permit and not the permit itself. The board would inform the local subdivision of its decision through an order. If the subdivision does not comply with the order, then it would be up to an aggrieved party to pursue compliance with the order through the circuit court. Reversing the conditions is not reversing the permit. Selk moved that the Livestock Facility Siting Review Board has the authority under s 93.90 (5) (b) and (d), Stats., to review any challenge to conditions placed by the political subdivision on a livestock facility siting permit as to whether those conditions comply with the law. Johnson seconded the motion. After further discussion on the authority of the board in this area and a meeting break, the board took a vote on the motion. The motion passed.

The board moved on to discussion of the conditions and challenges to the conditions, if any. Daniels read each condition as listed on the permit and then read the challenges. On Condition 1, board discussion focused around the three farming strategies listed in the condition as to whether they exceeded the state standards in whole or in part. Topel moved that Condition 1 including the three strategies listed exceeds the limits of the livestock siting rule and should be reversed. Gaska seconded the motion. The motion passed with Selk voting no only as to Part C of Condition 1 not exceeding the standards.

Condition 2 was moved to the end of this discussion to allow more time to decide first whether condition was being challenged.

On Condition 3, board discussion focused around the town's authority to access the property for monitoring purposes, this condition as the beginning of a monitoring plan, whether this condition would be covered under a DNR WPDES permit, and monitoring the wells surrounding the facility. Selk moved that Condition 3 be permitted to stay in the permit. Engelbrecht seconded the motion. A roll call vote was taken: Byerly-nay, Engelbrecht-aye, Gaska-nay, Holte-nay, Johnson-aye, Selk-aye, and Topel-nay. The motion failed. Gaska moved that Condition 3 should be reversed. Topel seconded the motion. A roll call vote was taken: Byerly-aye, Engelbrecht-nay, Gaska-aye, Holte-aye, Johnson-nay, Selk-nay, and Topel-aye. The motion passed.

Holte stated that Condition 4 was not be challenged by the aggrieved party.

On Condition 5, board discussion focused around whether this condition was too broad in its wording to include laws beyond ones pertaining to livestock siting. Selk moved to reverse Condition 5 and that the Town of Magnolia be directed to enter a condition that complies with requirement in s. 93.90 (3) (ae), Stats. Johnson seconded the motion. The motion passed.

On Condition 2, the board first discussed whether this condition was being challenged. They came to the conclusion that it was being challenged because the aggrieved party is proposing to limit information to that under the law. The discussion then focused on the potential for the information on management practices that must be exchanged between the Town and Larson Acres to be very broad as the condition is currently written. Selk moved to affirm Condition 2 as

a condition and direct the findings in the order to state that this condition be limited to those practices required by the standards. There was further discussion on what would happen if the Town does not comply with the order. There was no second to the motion so the motion died.

The Board took a lunch break at this time.

After lunch, discussion continued on the ambiguous wording in Condition 2, the possible purpose of the condition as it is currently written, and other means to monitor other than through this condition. Daniels reread Selk's earlier motion with clarification on the laws. The motion was the board affirm Condition 2 but make clear in the findings that it needs to be harmonized with the standards to be utilized are in s. 93.90, Stats., and ATCP 51, and that all information exchanged must be within the scope of those laws. Selk sponsored this motion, and Engelbrecht seconded it. The motion passed.

There was no challenge to Condition 6.

On Condition 7, board discussion focused around the consequences to the applicant if the Town fails to review the conditional use permit, the purpose of the condition as informing the citizens surrounding the facility, and the condition placed in an ordinance rather than on a permit. Topel moved to reverse Condition 7 in the permit. Byerly seconded the motion. There were 6 ayes and 1 nay. The motion passed.

d. LFSRB decision

Daniels reviewed the decisions made by the board during their discussion of the conditions. These decisions along with other motions made to decide case review procedures will be put into writing for the board to review before the next meeting. The public will be allowed to look at the draft decision but will not be allowed to comment on it since the decision was final at today's meeting.

e. Set date for special meeting to resolve case on or before July 30th or 31st

Since the board made its final decision at this meeting, no meeting later in July was required to resolve the case.

f. Set date for LFSRB signoff of final written decision on case for August 17, 2007

Holte reaffirmed with Daniels that the August 17th meeting date will be when the board signs off on the final decision made at today's meeting. Daniels added that a look at the procedures for reviewing a case will be included on the August agenda in order to further refine the procedures.

Topel asked if there are any other cases that may come before the board. Daniels responded that there is the possibility that another one may come before the board, but she has not seen anything yet.

3. Remaining LFSRB meeting dates in 2007—August 17, September 21, October 19, November 16, and December 21

Holte asked the board members if they had any conflicts with remaining board meeting dates in 2007. Engelbrecht stated he may not be able to attend the September 21st meeting.

Adjourn

Johnson moved to adjourn the meeting, and Engelbrecht seconded the motion. The motion passed. The meeting ended at 1:20 p.m.

Respectfully submitted,

Bob Selk, Secretary

Date

Recorder: LP

DRAFT

STATE OF WISCONSIN
LIVESTOCK FACILITY SITING REVIEW BOARD
2811 Agriculture Drive, P.O. Box 8911
Madison, Wisconsin 53708-8911

IN THE MATTER OF LARSON ACRES, INC., Aggrieved Person v. TOWN OF MAGNOLIA, Political Subdivision	DOCKET NO. 07-L-01 DECISION
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BEFORE the Wisconsin Livestock Facility Siting Review Board:

James Holte, Chair
Andrew Johnson, Vice Chair
Robert Selk, Secretary
Fran Byerly
Lee Engelbrecht
Jerome Gaska
Bob Topel

NATURE OF THE CASE

Aggrieved Person Larson Acres, Inc. ("Larson") filed a challenge against the political subdivision Town of Magnolia ("Town") to the Wisconsin Livestock Facility Siting Board ("Board") on April 25, 2007. In the challenge, Larson alleged that the Town exceeded its authority under s. 93.90(3), Stats., in attaching certain conditions to the granting of a conditional use permit to Larson Acres, Inc. on March 27, 2007.

On April 30, 2007, under the authority of the Board and its bylaws, Board Attorney Cheryl Furstace Daniels sent a Notice of Request for Review and a Request for Certified Copy of Decision-Making Record to the Town and Larson Acres, Inc. The Request for Review included a date of June 29, 2007 for all Statements of Position to be postmarked to the Board.

On May 15, 2007, Attorney Peter McKeever sent a Notice of Appearance to the Board on behalf of 10 persons who had standing to appear before the board in this matter as owners of property located within two miles of the proposed facility.

On May 30, 2007, the Town sent the complete certified copy of the decision-making record for the Larson case. That record consisted of 97 Exhibits in 10 Volumes.

On June 28, 2007, the Board received a Request for Leave to File Brief as Amicus Curiae and Brief on Amicus Curiae signed and filed by the Wisconsin Department of Agriculture's ("Department") Division of Agricultural Resource Management ("Division").

By June 29, 2007, 22 Statements of Position had been filed by owners of property located within two miles of the proposed facility. In addition, Attorney McKeever sent a position statement on behalf of 10 of those owners.

On July 3, 2007, the Town filed a Statement of Position. On July 11, 2007, the Board received a motion by Larson to strike the Town's Statement of Position. On July 13, 2007 the Board received a statement from Larson in response to the position statements filed by the Town and some of the property owners.

On July 16, 2007, the Board received an Objection from some of the property owners living within two miles of the proposed facility to the filing of the Amicus Curiae brief submitted by the Division and a motion to strike Larson's response received July 13, 2007.

On July 16, 2007, the Board received the Town's response to Larson's Motion to Strike the Town's position Statement. The Town also requested oral argument before the Board.

On July 17, 2007, the Board received Larson's response opposing both the Motion to Strike the Amicus Brief and the Motion to Present Oral Argument. On July 18, 2007, the Board received the Town's response to Larson's responses. On July 19, 2007, the Board received Larson's response to the Town's response to Larson's response to the Town's motions.

Finally, on July 19, 2007, the Town submitted a Motion to Correct the Record to include a letter of February 13, 2007.

On July 20, 2007, the Board held a meeting, properly noticed under the Wisconsin Open Meetings Law, to review the appeal in *Larson Acres, Inc. v. Town of Magnolia*, Docket No. 07-L-01. At the beginning of the meeting, the Board reviewed all the preliminary appeals by the parties. As to the various motions concerning striking statements by the parties, the Board decided to deny all those motions and accept all statements only for this particular matter as the first case before the Board. The Board also decided to deny the motion to strike the amicus brief and accept the brief for the value it brings to the Board's discussion and decision. Finally, the Board decided to deny the request for oral argument by the Town.

Therefore, based upon the record in the matter, including the certified record submitted by the Town including the corrected additional letter, the statements of position by all the parties, and the Division's amicus brief, the Board issues the following decision.

ISSUES FOR DECISION

1. What are the siting standards under s. 93.90, Stats., by which the decision of the Town of Magnolia on March 27, 2007 on a request by Larson Acres, Inc. for a conditional use permit will be judged?
2. Has the applicant, Larson Acres, Inc., satisfied those standards?
3. Was it appropriate for the Town of Magnolia to grant the conditional use permit?
4. May a political subdivision, in granting a conditional use permit under s. 93.90, Stats., set conditions as part of the conditional use permit?
5. What are the standards by which any conditions set be judged?
6. Does the Wisconsin Livestock Facility Siting Review Board have the authority to review any challenge to conditions placed by a political subdivision on a livestock facility siting permit as to whether those conditions comply with the siting standards under the law?
7. For each of the challenged conditions, did the Town of Magnolia incorrectly apply the state standards under s. 93.90(2)(a), Stats., or violate s. 93.90(3), Stats.?

RELEVANT STATUTES AND RULES

S. 93.90 Livestock facility siting and expansion.

(2) DEPARTMENT DUTIES. (a) For the purposes of this section, the department shall promulgate rules specifying standards for siting and expanding livestock facilities. . .

(3) POLITICAL SUBDIVISION AUTHORITY.

(ae) A political subdivision that requires a special exception or conditional use permit for the siting or expansion of any of the following livestock facilities shall require compliance with the applicable state standards under sub. (2)(a) as a condition of issuing the special exception or conditional use permit:

1. A new or expanded livestock facility that will have 500 or more animal units.

(ar) Notwithstanding par. (ae) a political subdivision may apply to a new or expanded livestock facility described in par. (ae) 1. or 2., as a condition of issuing a special exception or conditional use permit, a requirement that is more stringent than the state standards under sub. (2)(a) if the political subdivision does all of the following:

1. Adopts the requirement by ordinance before the applicant files the application for approval.

2. Bases the requirement on reasonable and scientifically defensible findings of fact, adopted by the political subdivision, that clearly show that the requirement is necessary to protect public health or safety.

(5) REVIEW OF SITING DECISIONS. (a) In this subsection "aggrieved person" means a person who applied to a political subdivision for approval of a livestock facility siting or expansion, a person who lives within 2 miles of a livestock facility that is proposed to be sited or expanded, or a person who owns land within 2 miles of a livestock facility that is proposed to be sited or expanded.

(b) An aggrieved person may challenge the decision of a political subdivision on an application for approval on the grounds that the political subdivision incorrectly applied the state standards under sub. (2)(a) that are applicable to the livestock facility siting or expansion or violated sub. (3), by requesting the board to review the decision. . .

(bm) Upon receiving a request under par.(b), the board shall notify the political subdivision of the request. The political subdivision shall provide a certified copy of the record under sub. (4) to the board within 30 days after the day on which it receives the notice.

(c) Upon receiving the certified copy of the record under par. (bm), the board shall determine whether the challenge is valid. The board shall make its decision without deference to the decision of the political subdivision and shall base its decision only on the evidence in the record under sub. (4)(b). . . The board shall make its decision within 60 days after the day on which it receives the certified copy of the record under par. (bm), except that the board may extend this time limit for good cause specified in writing by the board.

(d) If the board determines that a challenge is valid, the board shall reverse the decision of the political subdivision. The decision of the board is binding on the political subdivision, subject to par. (e). If a political subdivision fails to comply with a decision of the board that has not been appealed under par. (e), an aggrieved person may bring an action to enforce the decision.

Chapter ATPC 51 LIVESTOCK FACILITY SITING

ATCP 51.16 Nutrient management. (1) NUTRIENT MANAGEMENT STANDARD. (a) Except as provided in par. (c):

1. Land applications of waste from a livestock facility approved under this chapter shall comply with NRCS nutrient management technical standard 590 (September, 2005), except for sections V.A.2.b.(2), V.D., V.E. and VI.

(2) PRESUMPTION. For purposes of local approval, an operator is presumed to comply with sub. (1) if the application for local approval complies with s. ATPC 51.30.

ATCP 51.30 Application. (1) GENERAL. If local approval is required for a new or expanded livestock facility, a person seeking local approval shall complete and file with the political subdivision the application form shown in *Appendix A*. The application shall include all of the information required by *Appendix A* and attached *worksheets*, including any authorized modifications made by the political subdivision under sub. (2). The information contained in the application shall be credible and internally consistent.

(5) COMPLETE APPLICATION. Within 45 days after a political subdivision receives an application under sub. (1), the political subdivision shall notify the applicant whether the application contains everything required under subs. (1) to (4). If the application is not complete, the notice shall specifically describe what else is needed. Within 14 days after the applicant has provided everything required under subs. (1) to (4), the political subdivision shall notify the applicant that the application is complete. A notice of completeness does not constitute an approval of the proposed livestock facility.

ATCP 51.34 Granting or denying an application. (1) GRANTING AN APPLICATION. Except as provided in sub. (2), a political subdivision shall grant an application under s. ATCP 51.30(1) if all of the following apply:

- (a) The application complies with s. ATCP 51.30.
- (b) The application contains sufficient credible information to show, in the absence of clear and convincing information to the contrary, that the proposed livestock facility meets or is exempt from the standards in subch. II. To the extent that a standard under subch. II vests discretion in a political subdivision, the political subdivision may exercise that discretion.

(3) WRITTEN DECISION. (a) A political subdivision shall issue its decision under sub. (1) or (2) in writing. The decision shall be based on written findings of fact included in the decision. The findings of fact shall be supported by evidence in the record under s. ATCP 51.36. Findings may be based on presumptions created by this chapter.

(4) TERMS OF APPROVAL. An approval under sub. (1) is conditioned on the operator's compliance with subch. II and representations made in the application for approval. This chapter does not limit a political subdivision's authority to do any of the following:

- (a) Monitor compliance.
- (b) Withdraw an approval, or seek other redress provided by law, if any of the following apply:
 - 1. The operator materially misrepresented relevant information in the application for local approval.
 - 2. The operator, without authorization from the political subdivision, fails to honor relevant commitments made in the application for local approval. A political subdivision may not withhold authorization, under this subdivision, for reasonable changes that maintain compliance with the standards in subch. II.
 - 3. The livestock facility fails to comply with applicable standards in subch. II.

FINDINGS OF FACT

1. On September 15, 2005, the Town of Magnolia in Rock County adopted s. 93.90, Stats., the Livestock Facility Siting Law, as part of its town zoning ordinance.
2. On May 2, 2006, Larson Acres, Inc. filed an application for local approval for an expansion of his livestock facility to a 1500 animal unit heifer facility.
3. On November 14, 2006, the Town issued a determination that the Larson application was complete under s. 93.90(4)(a), Stats.
4. On March 27, 2007, the Town granted a conditional use permit (CUP) to Larson for the expansion of a livestock facility to 1500 animal units.
5. Within that decision, the Town found that Larson had not complied with s. ATCP 51.30, Wis. Adm. Code, as to meeting the standards, although the record indicated that Larson's application showed that it intended to comply with the requirements of NRCS 590 Nutrient Management, adopted as an appendix to chapter ATCP 51, Wis. Adm. Code.
6. To overcome what the Town deemed as non-compliance within the application for the CUP, the Town set seven specific conditions in its decision for Larson to comply with in being granted the CUP as follows:
 1. *Larson shall provide the Town, within 60 days of this decision, a plan to utilize land use, farming and nutrient management practices to substantially reduce and thereafter minimize nitrogen loading to surface and ground water using the following strategies:*
 - a. *No fall spreading of manure on tile drained or upland fields on the Cook Farm until nitrate pollution is substantially reduced.*
 - b. *Crop rotation to include alfalfa on the entire Cook farm in 3-4 year rotations beginning in 2008 and continuing over a 4-year period until the entire Cook Farm has been rotated and is consistent with the current farm conservation plan. The rotation plan shall include no less than 3 years of alfalfa for every year of corn planted on each acre.*
 - c. *Increased frequency of soil testing from once every four years to once a year, focusing on phosphorus and nitrogen contents of the soil to account for residual nitrogen in calculating spreading plans for the upcoming growing season.*
 2. *Larson will exchange information with the Town concerning management practices of the Facility, including notification to the Town Chair of all changes in circumstances.*
 3. *Larson will allow access for testing well water at the Facility and access for the Town to test tile lines for water quality monitoring purposes monthly, upon proper notice to the owners of the Facility unless such testing is required under the terms of*

a Wisconsin Pollution Discharge Elimination System Permit as issued by the Wisconsin Department of Natural Resources.

- 4. Larson will submit nutrient plans and update annually as required under WPDES to the Town of Magnolia as well as to the DNR.*
- 5. Larson will comply with all provisions of the Town of Magnolia Zoning Ordinance and any other applicable federal, state, and local regulations and laws.*
- 6. If water quality monitoring or testing is required under the terms of a WPDES permit as issued by the Wisconsin Department of Natural Resources, the Town shall be provided with all records and information provided by Larson Acres to the DNR.*
- 7. The Town Board shall review the CUP annually to assure itself that Larson is in compliance with the permit.*

In Re: Larson Acres' Conditional Use Permit Application for a 1,500 Animal Unit Heifer Facility. (Before the Town Board of the Town of Magnolia, March 27, 2007)

7. On April 25, 2007, Larson appealed the decision of the Town to the Wisconsin Livestock Facility Siting Review Board. In that appeal, Larson challenged the setting of specific conditions 1, 2, 3, 5 and 7 in granting the permit as a violation of s. 93.90(3), Stats., and s. ATCP 51.34, Wis. Adm. Code.

8. On April 27, 2007, Board Attorney Cheryl Furstace Daniels sent a Notice of Request for Review and a Request for Certified Copy of Decision-Making Record to the Town and its attorney, with copies to Larson and his attorney, stating that the Board would take up Larson's challenge at the Board's scheduled July 20, 2007 meeting.

9. On July 20, 2007, the Board met to decide the challenge by Larson Acres, Inc. to set certain specific conditions to the CUP granted by the Town of Magnolia to Larson Acres, Inc. on March 27, 2007.

CONCLUSIONS OF LAW

1. The standards to be applied in this matter are those under s. 93.90, Stats., and ch. ATCP 51, Wis. Adm. Code, as there is nothing in the record to show the Town adopted more stringent standards in the manner required by s. 93.90(3)(ar), Stats.

2. As the Town agreed Larson's application for the CUP was complete on November 14, 2006, and the record indicated that Larson would comply with the standards under s. 93.90, Stats., and ch. ATCP 51, Wis. Adm. Code, the applicant has satisfied the standards to receive the conditional use permit.

3. Under s. 93.90, Stats., and ch. ATCP 51, Wis. Adm. Code, the Town was correct in granting Larson's permit on March 27, 2007.

4. In granting that permit, under s. 93.90, Stats., and ch. ATPC 51, the Town retains the authority to set conditions of the permit but is limited in that authority to applying only those standards under s. 93.90(2)(a), Stats., that are applicable to Larson's facility expansion.
5. Pursuant to s. 93.90(5)(a) and (b), Stats, the applicant Larson may challenge the specific conditions set forth in the Town's March 27, 2007 granting of the CUP for a 1,500 animal unit heifer facility, as incorrectly applying the state standards under s. 93.90(2)(a), Stats., or violating s. 93.90(3), Stats. Therefore, the Board has jurisdiction to hear these challenges.
6. In specifying strategies or methods that Larson is required to utilize as management practices under condition (1) in order to comply with state standards, the Town incorrectly applied the state standards under s. 93.90(2)(a), Stats, and ch. ATPC 51, Wis. Adm. Code.
7. In specifying that Larson will exchange information with the Town concerning management practices of the Facility, including notification to the Town Chair of all changes in circumstances, the Town has the authority to request information under s. ATPC, 51.34(4)(a), Wis. Adm. Code, for monitoring compliance. However, this monitoring, including requests for information, must be harmonized with s. ATPC 51.34(4)(b), Wis. Adm. Code, which speaks to withdrawing the approval or seeking other redress provided by law, for non-compliance with standards under ch. ATPC 51, subchapter II. Therefore, the information requested must be limited to information needed to monitor compliance with standards pursuant to ch. ATPC 51, subchapter II, Wis. Adm. Code.
8. In requesting that Larson allow for testing well water at the facility and access for the Town to test tile lines for water quality monitoring purposes monthly, the Town incorrectly applied the state standards under s. 93.90(2)(a), Stats., and ch. ATPC 51, Wis. Adm. Code.
9. In requesting that Larson comply with all provisions of the Town of Magnolia Zoning Ordinance and any other applicable federal, state, and local regulations and laws, the Town exceeded their authority under s. 93.90(3)(ae), Stats.
10. In not requiring that Larson comply with the applicable state standards under s. 93.90(2)(a), Stats., as a condition of issuing the CUP, the Town did not meet the requirements for the CUP under s. 93.90(3)(ae), Stats.
11. In requiring as a condition of the CUP that the Town Board review the CUP annually to assure itself that Larson is in compliance with the permit, the Town exceeded their authority under s. 93.90(3), Stats., and s. ATPC 51.34(4)(a), Wis. Adm. Code, by including a provision in the CUP which is one that the applicant has no control over meeting.

ORDER

NOW, THEREFORE, IT IS ORDERED, pursuant to s. 93.90(5)(d), Stats.

1. The grant of a conditional use permit to Larson Acres, Inc. for a 1,500 animal unit heifer facility by the Town of Magnolia on March 27, 2007 is affirmed.
2. Condition #1 in the CUP specifying land use, farming, and nutrient management strategies to be utilized by Larson is reversed.
3. Condition #2 in the CUP stating that Larson will exchange information with the Town concerning management practices at the facility is affirmed but such information will be limited by law to information needed by the Town to monitor compliance with the livestock facility siting standards in s. 93.90, Stats., and ch. ATCP 51, Wis. Adm. Code.
4. Condition #3 in the CUP requiring monthly access for well water and tile lines testing is reversed.
5. Condition #4 in the CUP was not challenged and is, therefore, affirmed.
6. Condition #5 in the CUP requiring compliance with all provisions of the Town of Magnolia Zoning Ordinance and any other applicable federal, state and local regulations and laws is reversed.
7. The Town will, under s. 93.90(3)(ae), Stats., require a condition in the CUP that Larson comply with the applicable state standards under s. 93.90(2)(a), Stats.
8. Condition #6 in the CUP was not challenged and is, therefore, affirmed.
9. Condition #7 in the CUP requiring the Town Board to review the CUP annually to assure itself that Larson is in compliance with the permit is reversed.
10. The Town of Magnolia shall reissue the conditional use permit for a 1,500 animal unit heifer facility to Larson Acres, Inc. consistent with #1-9 of this Order.

DRAFT

Dated this 17th day of August, 2007.

STATE OF WISCONSIN
LIVESTOCK FACILITY SITING REVIEW BOARD

James Holte, Chair

Andrew Johnson, Vice Chair

Robert Selk, Secretary

Fran Byerly

Lee Engelbrecht

Jerome Gaska

Robert Topel

STATE OF WISCONSIN
LIVESTOCK FACILITY SITING REVIEW BOARD
2811 Agriculture Drive, P.O. Box 8911
Madison, Wisconsin 53708-8911

<p>IN THE MATTER OF LARSON ACRES, INC.,</p> <p style="text-align: right;">Aggrieved Person</p> <p>v.</p> <p>TOWN OF MAGNOLIA</p> <p style="text-align: right;">Political Subdivision</p>	<p>DOCKET NO. 07-L-01</p> <p>OPINION OF THE BOARD</p>
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This is the first case to come before the Wisconsin Livestock Facility Siting Board under s. 93.90, Stats. The Board is very well aware of the importance to both the individual applicant, to have consistent standards to meet, as well as to the political subdivision in assuring its citizens that the applicant does comply with applicable laws and standards.

In judging the preliminary motions, involving the submission by the parties of additional position statements, the Board has allowed these submissions to stand in this case. However, in allowing these submissions, the Board is determined that this will not set precedence for future cases and will review their procedures at the first available opportunity to determine how to have staff meet the procedures established by the Board in 2006.

In addition, the Board has allowed the submission of an amicus curiae brief of the Division. It may continue to allow such briefs in the future for assisting the Board in making its determinations. However, as the Wisconsin Supreme Court has made clear in a very recent decision, the administrative entity with authority to conduct the hearing with its final decision subject to judicial review is the entity whose interpretation of the statute

under question is given any deference by the court. *Racine Harley-Davidson, Inc. v. State of Wisconsin Division of Hearings and Appeals*, 2006 WI 86, 292 Wis.2d 549, 586-87.

Therefore, in this case, the Board has been given the authority to conduct the appeals hearing and makes the final decision under s. 93.90, Stats. The board's interpretations of that statute will be the ones who will be given deference, if any, by the court.

The Board, too, denied the motion for oral arguments. This comports with their bylaws Appendix A, C.3. limiting the seeking of oral argument only to Board members, if they deem it necessary.

As to the Board's jurisdiction in this case generally, although the Board discussed the fact that this was a facility already built, the parties agreed that this was a request for an expansion to house up to 1,500 heifer animal units. Therefore, Larson was correct in his right to appeal the Town's decision to the Board.

While the Board discussed at length its understanding of the Town's concerns for the well-being of its citizens and their responsibilities for enforcing other laws and rules that apply within the Town, the Livestock Siting Law has limited any local political subdivision's right to enforce these other laws and rules in the siting process. Therefore, while the Town was correct in granting the CUP to Larson under the standards set in s. 93.90, Stats., and ch. ATCP 51, Wis. Adm. Code, their authority to set conditions was equally constrained by the standards under that statute and administrative code chapter. This is particularly true because the Town had not set more stringent standards pursuant to the authority granted to them by s. 93.90(3), Stats.

In addition, because any conditions written into the conditional use permit is constrained by the terms of s. 93.90, Stats., the Board found that it must have the

authority to review any conditions placed by the political subdivision on a livestock facility siting permit as to whether those conditions comply with the law. The Board is the administrative body appointed to hear appeals involving the grant or denial of a CUP by a local political subdivision and any conditions placed by the political subdivision must necessarily also comply with this statute of statewide application.

Each specified condition, therefore, has been judged on the basis of whether it was incorrect under the state standards in s. 93.90(2)(a) applicable to the facility siting expansion in this case. With the first condition, the Town tried to prescribe specific methods for achieving the standards, whereas the standards themselves speak only to the outcomes that should be attained, not which methods to be utilized to achieve the outcomes. Condition #2, while allowable as far as the Town's ability to monitoring compliance, needed to be understood as limited to requesting information pertaining to compliance with the state standards. Condition #3 was reversed as being more stringent than state standards allowed. Condition #5 was similarly overbroad as to compliance but the Town had not included a correct provision that mirrored the requirements for compliance to be written into the CUP, pursuant to s. 93.90(3)(ae), Stats. Finally, the condition that sets a requirement for the Town to review the CUP was deemed outside the standards altogether, as to requirements that could be set for the applicant.

Dated this 17th day of August, 2007.

STATE OF WISCONSIN
LIVESTOCK FACILITY SITING REVIEW BOARD

James Holte, Chair

Andrew Johnson, Vice Chair

Robert Selk, Secretary

Fran Byerly

Lee Engelbrecht

Jerome Gaska

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